



Division of
Enforcement

COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5320
Facsimile: (202) 418-5531

Julia C. Colarusso
Trial Attorney
(202) 418-6044
jcolarusso@cftc.gov

March 20, 2020

VIA ECF

The Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 18C
New York, New York 10007-1312

Re: *Commodity Futures Trading Commission v. Control-Finance Ltd., et al.*,
Civil Action No. 1:19-cv-05631-MKV

Dear Judge Vyskocil:

Pursuant to Local Rules 5.2(b) and 7.1(d) and Rules 2.B, 2.G, and 4.B of the Court's Individual Practices, we write on behalf of Plaintiff Commodity Futures Trading Commission (the "Commission") to respectfully request an adjournment of the Initial Conference in the above-captioned action and the submission of a Rule 26(f) report.

On January 7, 2020, while this action was still pending before Judge Koeltl, he entered an Order granting the Commission's motion to serve Defendant Benjamin Reynolds ("Reynolds") by publication and setting the Initial Conference for March 31, 2020 at 4:30 p.m. *See* ECF No. 20. Federal Rule of Civil Procedure 26(f)(2) requires the parties to submit a proposed discovery plan to the Court at least seven days before that date. As detailed below, Reynolds's time to answer or otherwise respond to the complaint has expired, and he has not appeared to defend this action. Accordingly, the Commission intends to move for a default judgment against him, which obviates the need for a scheduling conference and the preparation of a discovery plan. The Commission therefore requests that the Court suspend the Initial Conference.

The Commission filed its complaint against Reynolds and Defendant Control-Finance Limited ("Control-Finance") on June 17, 2019, alleging fraud and other violations of the Commodity Exchange Act and related Commission Regulations. *See* ECF No. 1. As set forth in the complaint, Reynolds operated a fraudulent scheme, principally through Control-Finance's public website and social media accounts, to misappropriate Bitcoin from more than 1,000 customers. As further alleged in the complaint, Reynolds is an individual and United Kingdom national who has represented that he resides in Manchester, England. At all times relevant to this action, Reynolds acted as Control-Finance's sole owner, operator, and director.

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Despite diligent efforts, the Commission was unable to identify a specific address where Reynolds could be served with process. After exhausting all other options, the Commission sought leave to serve Reynolds by publication in the United Kingdom pursuant to Federal Rule of Civil Procedure 4(f)(3). Judge Koeltl granted that request on January 7, 2020. ECF No. 20. As required by the January 7 Order, the Commission published a notice about the case in *The Daily Telegraph*, a U.K. newspaper, once a week for four consecutive weeks. The Commission then filed a Proof of Service with the Court on March 3, 2020. ECF No. 21.

The Order granting the Commission's motion to serve Reynolds by publication obligated Reynolds to respond to the complaint within twenty-one days from the date of the last publication in *The Daily Telegraph*. As set forth in the Commission's Proof of Service, the last publication occurred on February 8, 2020. Accordingly, Reynolds was required to respond to the complaint on or before March 2, 2020. To date, Reynolds has not filed an answer or otherwise responded to the complaint, and, as stated above, the Commission intends to move for a default judgment against him. Given these circumstances, a scheduling conference and discovery plan are not needed to resolve this case.

For the foregoing reasons, and in the interests of efficiency, the Commission respectfully requests that the Court adjourn the Initial Conference currently scheduled for March 31, 2020 and the submission of a Rule 26(f) report. The Commission has made three previous requests to adjourn the Initial Conference, which were granted on August 19, 2019 (ECF No. 11), November 19, 2019 (ECF No. 14), and January 7, 2020 (ECF No. 20). Due to the Commission's inability to locate Reynolds for service, it has not been able to seek his consent to this request.

We thank the Court for its consideration of this matter.

Respectfully submitted,

By: s/Julia C. Colarusso

Julia C. Colarusso (admitted *pro hac vice*)

Jonah E. McCarthy (S.D.N.Y. Bar No. JM1977)

Luke B. Marsh (admitted *pro hac vice*)

Paul G. Hayeck (*pro hac vice* application to be submitted)

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1155 21st Street, NW

Washington, DC 20581

Telephone: (202) 418-6044 (Colarusso direct)

jcolarusso@cftc.gov

jmccarthy@cftc.gov

lmarsh@cftc.gov

phayeck@cftc.gov

Attorneys for Plaintiff